

is justified as a therapeutic intervention and documented in the participant's clinical record.

(i) Chemical restraint is the inappropriate use of a sedating psychotropic drug to manage or control behavior.

(ii) Physical restraint is any method of physically restricting a person's freedom of movement, physical activity or normal access to his or her body.

(2) The program management uses a system to achieve a restraint-free environment.

(3) The program management collects data about the use of restraints.

(4) When alternatives to the use of restraint are ineffective, restraint is safely and appropriately used.

(b) *Abuse.* (1) The participant has the right to be free from mental, physical, sexual, and verbal abuse or neglect, corporal punishment, and involuntary seclusion.

(i) Mental abuse includes humiliation, harassment, and threats of punishment or deprivation.

(ii) Physical abuse includes hitting, slapping, pinching, kicking or controlling behavior through corporal punishment.

(iii) Sexual abuse includes sexual harassment, sexual coercion, and sexual assault.

(iv) Neglect is any impaired quality of life for an individual because of the absence of minimal services or resources to meet basic needs. Neglect may include withholding or inadequately providing food and hydration, clothing, medical care, and good hygiene. It also includes placing the individual in unsafe or unsupervised conditions.

(v) Involuntary seclusion is a participant's separation from other participants against his or her will or the will of his or her legal representative.

(2) [Reserved]

(c) *Staff treatment of participants.* The program management must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of participants and misappropriation of participant property.

(1) The program management must—

(i) Not employ individuals who—

(A) Have been found guilty of abusing, neglecting, or mistreating individuals by a court of law; or

(B) Have had a finding entered into an applicable State registry or with the applicable licensing authority concerning abuse, neglect, mistreatment of individuals or misappropriation of their property; and

(ii) Report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a program assistant or other program staff to the State oversight agency director and licensing authorities.

(2) The program management must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of participant property are reported immediately to the State oversight agency director and to other officials in accordance with State law through established procedures.

(3) The program management must have evidence that all alleged violations are thoroughly investigated, and must prevent potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the State oversight agency director or the designated representative and to other officials in accordance with State law within five working days of the incident, and appropriate corrective action must be taken if the alleged violation is verified.

(Authority: 38 U.S.C. 101, 501, 1741-1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900-0160.)

§ 52.100 Quality of life.

Program management must provide an environment and provide or coordinate care that supports the quality of life of each participant by maximizing the individual's potential strengths and skills.

(a) *Dignity.* The program management must promote care for participants in a manner and in an environment that maintains or enhances each participant's dignity and respect in full recognition of his or her individuality.

(b) *Self-determination and participation.* The participant has the right to—

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care;

(2) Interact with members of the community both inside and outside the program; and

(3) Make choices about aspects of his or her life in the program that are significant to the participant.

(c) *Participant and family concerns.* The program management must document any concerns submitted to the management of the program by participants or family members.

(1) A participant's family has the right to meet with families of other participants in the program.

(2) Staff or visitors may attend participant or family meetings at the group's invitation.

(3) The program management must respond to written requests that result from group meetings.

(4) The program management must listen to the views of any participant or family group and act upon the concerns of participants and families regarding policy and operational decisions affecting participant care in the program.

(d) *Participation in other activities.* A participant has the right to participate in social, religious, and community activities that do not interfere with the rights of other participants in the program.

(e) *Therapeutic participant activities.* (1) The program management must provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well being of each participant.

(2) The activities program must be directed by a qualified professional who is a qualified therapeutic recreation specialist or an activities professional who—

(i) Is licensed, if applicable, by the State in which practicing; and

(ii) Is certified as a therapeutic recreation specialist or an activities professional by a recognized certifying body.

(3) A critical role of the adult day health care program is to build rela-

tionships and create a culture that supports, involves, and validates the participant. Therapeutic activity refers to that supportive culture and is a significant aspect of the individualized plan of care. A participant's activity includes everything the individual experiences during the day, not just arranged events. As part of effective therapeutic activity the adult day health care program must:

(i) Provide direction and support for participants, including breaking down activities into small, discrete steps or behaviors, if needed by a participant;

(ii) Have alternative programming available for any participant unable or unwilling to take part in group activity;

(iii) Design activities that promote personal growth and enhance the self-image and/or improve or maintain the functioning level of participants to the extent possible;

(iv) Provide opportunities for a variety of involvement (social, intellectual, cultural, economic, emotional, physical, and spiritual) at different levels, including community activities and events;

(v) Emphasize participants' strengths and abilities rather than impairments and contribute to participant feelings of competence and accomplishment; and

(vi) Provide opportunities to voluntarily perform services for community groups and organizations.

(f) *Social services.* (1) The facility management must provide medically-related social services to participants and their families.

(2) An adult day health care program must employ or contract for a qualified social worker to provide social services.

(3) Qualifications of social worker. A qualified social worker is an individual with—

(i) A bachelor's degree in social work from a school accredited by the Council of Social Work Education (Note: A master's degree social worker with experience in long-term care is preferred);

(ii) A social work license from the State in which the State home is located, if license is offered by the State; and

(iii) A minimum of one year of supervised social work experience in a health care setting working directly with individuals.

(4) The facility management must have sufficient social worker and support staff to meet participant and family social services needs. The adult day health care social services must:

(i) Provide counseling to participants and families/caregivers;

(ii) Facilitate the participant's adaptation to the adult day health care program and active involvement in the plan of care, if appropriate;

(iii) Arrange for services not provided by the adult day health care program and work with these resources to coordinate services;

(iv) Serve as participant advocate by asserting and safeguarding the human and civil rights of the participants;

(v) Assess signs of mental illness and/or dementia and make appropriate referrals;

(vi) Provide information and referral for persons not appropriate for adult day health care program;

(vii) Provide family conferences and serve as liaison between participant, family/caregiver and program staff;

(viii) Provide individual or group counseling and support to caregivers and participants;

(ix) Conduct support groups or facilitate participant or family/caregiver participation in support groups;

(x) Assist program staff in adapting to changes in participants' behavior; and

(xi) Provide or arrange for individual, group, or family psychotherapy for participants' with significant psychosocial needs.

(5) Space for social services must be adequate to ensure privacy for interviews.

(g) *Environment.* The program management must provide—

(1) A safe, clean, comfortable, and homelike environment, and support the participants' ability to function as independently as possible and to engage in program activities;

(2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;

(3) Private storage space for each participant sufficient for a change of clothes;

(4) Interior signs to facilitate participants' ability to move about the facility independently and safely;

(5) A clean bed available for acute illness, when indicated;

(6) A shower for resident's need, when indicated;

(7) Adequate and comfortable lighting levels in all areas;

(8) Comfortable and safe temperature levels; and

(9) Comfortable sound levels.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

§ 52.110 Participant assessment.

The program management must conduct initially, semi-annually and as required by a change in the participant's condition a comprehensive, accurate, standardized, reproducible assessment of each participant's functional capacity.

(a) *Intake screening.* An intake screening must be completed to determine the appropriateness of the adult day health care program for each participant.

(b) *Enrollment orders.* The program management must have physician orders for the participant's immediate care and a medical assessment, including a medical history and physical examination, within a time frame appropriate to the participant's condition, not to exceed 72 hours after enrollment, except when an examination was performed within five days before enrollment and the findings were provided and placed in the clinical record on enrollment.

(c) *Comprehensive assessments*—(1) The program management must make a comprehensive assessment of a participant's needs using (on and after January 1, 2002) the Minimum Data Set for Home Care (MSD-HC) Instrument Version 2.0, August 2, 2000.

(2) Frequency. Participant assessments must be completed—

(i) No later than 14 calendar days after the date of enrollment; and